

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1294

Introduced by Assembly Member Wiggins

February 21, 2003

An act to add Section 1788.18 to the Civil Code, relating to debt collection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1294, as amended, Wiggins. Debt collectors: responsibilities: identity theft.

Existing law regulates the activities of debt collectors, and prohibits a debt collector from asserting that nonpayment of ~~the~~ a consumer debt may result *in* the seizure or sale of any property or the garnishment or attachment of wages of ~~the~~ a debtor, unless that action is in fact contemplated by the debt collector and permitted by ~~the~~ law.

This bill would require a debt collector to stop collecting a consumer debt ~~for 30 business days~~ when an alleged debtor provides the debt collector certain information, including, *but not limited to*, information relating to *the* alleged debtor's status as a victim of identity theft. The bill would ~~require~~ *permit* the debt collector to *recommence collection activities only upon* a review ~~and consider~~ of all of the information submitted and ~~cease collecting the debt if that information reasonably establishes~~ *upon the making of a good faith determination, as specified,* that the *information provided by the debtor* ~~did~~ *does not* ~~incur~~ *establish* that the debtor is not responsible for the debt. The bill would also require debt collectors to notify consumer credit reporting agencies and creditors of specified information.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1788.18 is added to the Civil Code, to
2 read:
3 ~~1788.18.—(a) A debt collector shall immediately cease~~
4 1788.18. (a) Upon receipt from a debtor of all of the
5 following, a debt collector shall cease collection activities until
6 completion of the review provided in subdivision (d):
7 (1) A copy of a police report filed by the debtor alleging that the
8 debtor is the victim of an identity theft crime, including, but not
9 limited to, a violation of Section 530.5 of the Penal Code, for the
10 specific debt being collected by the debt collector.
11 (2) The debtor's written statement that the debtor claims to be
12 the victim of identity theft with respect to the specific debt being
13 collected by the debt collector.
14 (b) The written statement described in paragraph (2) of
15 subdivision (a) shall consist of any of the following:
16 (1) A Federal Trade Commission's Affidavit of Identity Theft.
17 (2) A written statement containing the content of the Identity
18 Theft Victim's Fraudulent Account Information Request offered to
19 the public by the California Office of Privacy Protection.
20 (3) A written statement, containing or accompanied by, the
21 following that are relevant to the debt in question to the debtor's
22 allegation of identity theft:
23 (A) A statement that the debtor is a victim of identity theft.
24 (B) A copy of the debtor's driver's license or identification
25 card, as issued by the state.
26 (C) Any other identification document that supports the
27 statement of identity theft.
28 (D) Specific facts supporting the claim of identity theft, if
29 available.
30 (E) Any explanation showing that the debtor did not incur the
31 debt.
32 (F) Any available correspondence disputing the debt after
33 transaction information has been provided to the debtor.
34 (G) Documentation of the residence of the debtor at the time of
35 the alleged debt. This may include copies of bills and statements,

1 *such as utility bills, tax statements, or other statements from*
2 *businesses sent to the debtor, showing that the debtor lived at*
3 *another residence at the time the debt was incurred.*

4 *(H) A telephone number for contacting the debtor concerning*
5 *any additional information or questions, or direction that further*
6 *communications to the debtor be in writing only, with the mailing*
7 *address specified in the statement.*

8 *(I) To the extent the debtor has information concerning who*
9 *may have incurred the debt, the identification of any person whom*
10 *the debtor believes is responsible.*

11 *(J) An express statement that the debtor did not authorize the*
12 *use of the debtor's name or personal information for incurring the*
13 *debt.*

14 *(c) If a debtor notifies a debt collector orally that he or she is*
15 *a victim of identity theft, the debt collector shall notify the*
16 *consumer, orally or in writing, that the debtor's claim must be in*
17 *writing. If a debtor notifies a debt collector in writing that he or*
18 *she is a victim of identity theft, but omits information required*
19 *pursuant to subdivision (a), if the debt collector does not cease*
20 *collection activities, the debt collector shall provide written notice*
21 *to the debtor of the additional information that is required or send*
22 *the debtor a copy of the Federal Trade Commission's Affidavit of*
23 *Identity Theft form.*

24 *(d) Upon receipt of the complete statement and information*
25 *described in subdivision (a), the debt collector shall review and*
26 *consider all of the information provided by the debtor and other*
27 *information available to the debt collector in its file or from the*
28 *creditor. The debt collector may recommence debt collection*
29 *activities only upon making a good faith determination that the*
30 *information provided by the debtor does not establish that the*
31 *debtor is not responsible for the specific debt in question. The debt*
32 *collector's determination shall be made in a manner consistent*
33 *with the provisions of 15 U.S.C. Sec. 1692f(1), as incorporated by*
34 *Section 1788.17. The debt collector shall notify the consumer in*
35 *writing of that determination and the basis for that determination*
36 *before proceeding with any further collection activities. The debt*
37 *collector's determination shall be based on the information*
38 *provided by the debtor and the information in the debt collector's*
39 *file for the specific debt in question.*

1 (e) No inference or presumption that the debt is valid or invalid,
2 or that the debtor is liable or not liable for the debt, shall arise if
3 the debt collector concludes after the review described in
4 subdivision (d) to cease or recommence the debt collection
5 activities. The exercise or nonexercise of rights under this section
6 is not a waiver of any other right or defense of the debtor or debt
7 collector.

8 (f) The statement and supporting documents that comply with
9 subdivision (a) may also satisfy, to the extent those documents meet
10 the requirements of, the notice requirement of paragraph (5) of
11 subdivision (c) of Section 1798.93.

12 (g) A debt collector who ceases collection activities under this
13 section and does not recommence those collection activities, shall
14 do all of the following:

15 (1) If the debt collector has furnished adverse information to a
16 consumer credit reporting agency, notify the agency to delete that
17 information.

18 (2) Notify the creditor that debt collection activities have been
19 terminated based upon the debtor's claim of identity theft.

20 (h) A debt collector, who has possession of documents that the
21 debtor is entitled to request from a creditor pursuant to Section
22 530.8 of the Penal Code, is authorized to provide those documents
23 to the debtor.

24 ~~collecting or attempting to collect a consumer debt for a period of~~
25 ~~30 business days upon receipt from a debtor of all of the following:~~

26 ~~(1) A copy of a police report filed by the debtor alleging a~~
27 ~~violation of Section 530.6 of the Penal Code.~~

28 ~~(2) A copy of the debtor's request for information, if any,~~
29 ~~pursuant to Section 1748.95 of this code, Section 4002 or 22470~~
30 ~~of the Financial Code, or Section 530.8 of the Penal Code.~~

31 ~~(3) The debtor's written statement that the debtor is a victim of~~
32 ~~identity theft and any explanation showing that the debtor did not~~
33 ~~incur the debt.~~

34 ~~(b) Within the 30 business day period specified by subdivision~~
35 ~~(a), the debtor shall provide the debt collector the information that~~
36 ~~he or she receives in response to any request pursuant to Section~~
37 ~~1748.95 of this code, Section 4002 or 22470 of the Financial Code,~~
38 ~~or Section 530.8 of the Penal Code, and any other information~~
39 ~~indicating that the debtor did not incur the debt.~~

1 ~~(c) The debt collector shall promptly review and consider all of~~
2 ~~the information described in subdivision (b) and the police report.~~
3 ~~The debt collector shall immediately and permanently cease~~
4 ~~collecting or attempting to collect the debt if the information~~
5 ~~provided by the debtor, or any other information available to the~~
6 ~~debt collector, reasonably establishes that the debtor did not incur~~
7 ~~the debt. Contradictory information possessed by the debt~~
8 ~~collector does not, in itself, permit the debt collector to conclude~~
9 ~~that the debtor incurred the debt.~~

10 ~~(d) No inference or presumption that the debt is valid or that the~~
11 ~~debtor is liable for the debt shall arise if the debt collector~~
12 ~~concludes after the review described in subdivision (c) that the~~
13 ~~information does not reasonably establish that the debtor did not~~
14 ~~incur the debt.~~

15 ~~(e) A communication by the debtor to the debt collector that~~
16 ~~complies with subdivision (a) shall satisfy the notice requirement~~
17 ~~of paragraph (5) of subdivision (c) of Section 1798.93.~~

